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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,593	06/13/2007	Peter Daute	5007447.010US1	8566

29737 7590 06/09/2010
SMITH MOORE LEATHERWOOD LLP
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EXAMINER

WEISS, PAMELA HL

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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06/09/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/590,593	Applicant(s) DAUTE, PETER	
	Examiner PAMELA WEISS	Art Unit 1797	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Glenn A Caldarola/
 Supervisory Patent Examiner, Art Unit 1797

/PW?

Continuation of 11. does NOT place the application in condition for allowance because:

The amendments to the claims add procedural limitations not previously considered and therefore will not be entered.

Applicant argues: 1) that the combined references do not disclose a "natural fat or oil" or a natural fat and/or oil with an iodine value below 10; and, 2) that the references are not combinable asserting that the references teach away from each other by virtue of iodine numbers.

These arguments are not persuasive for the following reasons:

1) the references disclose a natural fat or oil with an iodine value below 10

The independent claims require two components. the first is a natural fat and or oil with an iodine value below 10. This fat or oil may be, according to the last paragraph of claim 1, the hydrogenation products thereof (claim 1 recites "...wherein the fats and oils of a) can be used in the form of naturally occurring fats and oils, or the hydrogenation products thereof,...". The second component is another lubricant different from the first.

The applicant disputes whether the first component is disclosed by the combined references.

Worsech '069 discloses a composition with two components. One of the components is a mixed ester and the other is an ester.

Worsech '069 discloses the ester can be cottonseed oil or hardened castor oil (hardened castor oil will have an iodine number below 10). Applicant argues hardening is a treatment of natural oil by means of hydrogenation changing its properties and appearance and therefore the hardened castor oil is not a natural oil. Since the claim limitation for the component of the natural oil expressly permits hydrogenation, this argument is unpersuasive. Therefore Worsech '069 discloses a mixed ester and a hardened castor oil meeting the claim limitations. Worsech '887 is also cited and discloses rapeseed oil which is selectively hydrogenated and has an iodine number less than or equal to 5. The references clearly disclose the natural oil as claimed.

2) the references are combinable

The examiner is unable to locate any passage in Worsech '069 which teaches away from low iodine value. Worsech '069 does not disclose the natural fat or oil to require an iodine value about 103 nor does it teach away from natural fats or oils having iodine values below 10. Worsech '069 disclosed hardened castor oil which will have a iodine number below 10. Worsech '069 discloses various embodiments where the components are solid or liquid and where the combined composition may be solid or liquid. This intrinsically contemplates using oils having low iodine numbers (i.e. low iodine number natural oils are hydrogenated/more saturated and therefore are typically more solid at room temperature). Worsech '069 discloses an embodiment where the components are both solid at room temperature (C8 L60-C9L10) Worsech '069 discloses the composition for use in thermoplastic materials and shaping. Worsech '887 discloses a composition for use in molding of PVC (i.e. thermoplastic materials) and discloses substitutes for hydrogenated/hardened castor oil of hydrogenated natural oils. Accordingly, the combination of the references is appropriate.

For the above reasons, the rejections set forth in the office action mailed March 29, 2010 are maintained.

/Glenn A Caldarola/
Supervisory Patent Examiner, Art Unit 1797